D.B.INCOME TAX APPEAL NO.107/2006

Commissioner of Income Tax – I VS. Shri Ram Kishan Leela

D.B.INCOME TAX APPEAL NO.109/2006

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DATE OF ORDER : 9/10/2006

HON'BLE SHRI RAJESH BALIA, J.

HON'BLE SHRI GOPAL KRISHAN VYAS, J.

Mr.Vivek Shrimali for
Mr.Sangeet Lodha, for the appellants.

The revenue, at whose instance these appeals have been preferred relating to assessment years 1985-86 and 1986-87, has challenged the common order passed by the Tribunal on 28/2/2005, whereby, reassessment orders for the aforesaid two assessment years 1985-86 and 1986-87 in the case of respondent assessee have been quashed.

The appellant has sought to raise the question about validity of the finding reached by the Tribunal as well as by CIT (Appeals) that reopening of the assessment for these two years cannot be sustained.

The facts of the case are that, in the first instance, the respondent assessee has filed return for assessment year 1985-86 on 30/3/1985 declaring loss of Rs. 69,735/- and, thereafter on 31/3/1986 another return was filed under Amnesty Scheme declaring loss of Rs.32,565/-. A search was conducted at the assessee's premises on 15/3/1990 and proceedings were initiated under Section 147 read with Section 148 of the Income Tax Act, 1961. Finally, assessments were concluded under Section 143 (3) read with Section 147 for the two assessment years determining income from property dealing at Rs.32,000/- and 34,000/- respectively for two assessment years.

On appeal, the CIT (Appeals) deleted the additions made for both the years, which order was set aside by the Tribunal and Assessing Officer was directed to make fresh assessment in terms of the directions issued in the order dated 8/1/2002 and as a result thereof the assessment orders were reframed under Section 143(3) read with Section 147 on 28/8/2003.

Meanwhile, on 20/3/1996 the Assessing Officer received a communication from A.D.I.T. along with zero copies of books allegedly belonging to M/s Jagdamba Griha Nirma Sahakari Samiti Ltd. Jodhpur suggesting that income belonging to the society had escaped assessment. It appears that when notice under Section 148 was issued to

the respondent assessee in pursuance of information received from Addl. Director of Inspection, Income Tax that the material relating to M/s Jagdamba Griha Niram Sahakari Samiti Ltd., another notice under Section 147/148 was issued to the assessee. The appeal against the earlier assessment order passed under Section 143(3) read with Section 147 was pending in view of the fact that the Assessing Officer resorted to reassessment proceedings once again by issuing notice on 28/3/1996 with the permission of Addl.CIT in relation to the respondent assessee.

In response to reassessment proceedings, the Assessing Officer passed second reassessment order under Section 143(3) read with Section 147 on 30/3/1998. On appeal, the CIT (Appeals) quashed the reassessment order by holding that initiation of proceedings under Section 148 was bad. That conclusion has been upheld by the Tribunal vide order under appeal.

Having given our careful consideration to the facts and circumstances of the case and the submissions made by learned counsel for the appellant, we are of the opinion that issues raised in these appeals are of academic importance and from the narration of facts it is apparent that first reassessment proceedings initiated after the search was conducted at the premises of respondent assessee on 15/3/1990 had not attained finality and as a result of orders of the appellate forum the

reassessment proceedings for the assessment years 1985-86 and 1986-87 in pursuance of notice issued prior to one in question became pended and final assessment orders were passed on 28/3/2003.

Apparently, two assessment proceedings could not have continued together and at parallel length. The original reassessment proceedings have already been restored to the file of Assessing Officer, consequently, second reassessment proceedings become infructuous as the orders can be passed on the basis of available material including information received lateron while finalising the proceedings under Section 143(3) read with Section 147 in pursuance of the reassessment proceedings commenced earlier to one in question. While the first reassessment proceedings were pending, there cannot be second reassessment proceeding. It is also settled that once the reassessment proceedings are pending, the entire assessment is open and is not confined to scope of reasons recorded by the Assessing Officer before assuming jurisdiction. The setting aside of the reassessment proceedings commenced vide notice dated 28/3/1996 could not have been resurrected and all material must be taken into consideration in making final assessment in terms of the directions of the Tribunal while setting aside the order of CIT (Appeals) and directing the Assessing Officer to make fresh assessment vide its order dated 8/1/2002.

The Tribunal has categorically reached a finding in these appeals that M/sJagadamba Griha Nirman Sahakari Samiti Ltd, Jodhpur, is a separate entity with the respondent assessee. On the basis of this finding also, the reassessment order framed in favour of respondent assessee could not have been sustained. The finding that M/s.Jagadamba Griha Nirman Sahakari Samiti Ltd. and respondent assessee are two separate entities and independent of each other is a finding of fact and that finding has not been challenged before us. For that reason also assessment order dated 30/3/1998 cannot be sustained. Viewed from any angle, the questions raised in these appeals are of academic importance and cannot be considered as questions of law requiring consideration in these appeals.

Accordingly, both the appeals fail and are hereby dismissed.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

Pankaj Baweja.